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ENCL

October 20, 2011

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Bryce Eagle, Facility Operator
Brett Friend, Product Manager
Nelson Parker, Facility Manager
Bavarian Auto Recycling, Inc., dba, BMW Auto Recycling
3688 Omec Circle
Rancho Cordova, CA 95742

11 OCT 26 AM 10:20

DEPT. OF JUSTICE - ENRD
ENVIRONMENTAL DIVISION

Bryce Eagle, Agent for Service of Process
Bavarian Auto Recycling, Inc.
3688 Omec Circle
Rancho Cordova, CA 95742

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act

Dear Messrs. Eagle, Friend and Nelson:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at the Bavarian Auto Recycling, Inc. facility doing business as BMW Auto Recycling ("Bavarian Auto"), located at 3688 Omec Circle in Rancho Cordova, California ("the Facility"). The WDID identification number for the Facility is 5S34I010230. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of Morrison Creek, the Sacramento River, the Sacramento-San Joaquin River Delta and other California waters. This letter is being sent to you as the responsible owner, officer, or operator of the Facility. Unless otherwise noted, Bavarian Auto Recycling, Inc., Bryce Eagle, Brett Friend and Nelson Parker shall hereinafter be collectively referred to as Bavarian Auto.

This letter addresses Bavarian Auto's unlawful discharges of pollutants from the Facility to Morrison Creek, the Sacramento River and the Sacramento-San Joaquin Delta. This letter addresses the ongoing violations of the substantive and procedural



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requirements of the Clean Water Act and National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Order No. 97-03-DWQ ("General Permit" or "General Industrial Storm Water Permit").

Section 505(b) of the Clean Water Act provides that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen must give notice of intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("the EPA"), and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, Bavarian Auto Recycling, Inc., Bryce Eagle, Brett Friend and Nelson Parker are hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against Bavarian Auto Recycling, Inc., Bryce Eagle, Brett Friend and Nelson Parker under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more fully below.

I. Background.

Bavarian Auto owns and operates an automobile salvage facility located in Rancho Cordova, California. The Facility falls under Standard Industrial Classification ("SIC") Code 5015 ("Automobile Salvage Yards"). The Facility is used to receive, store, handle, dismantle and recycle decommissioned vehicles and automotive parts.

Bavarian Auto discharges storm water from its approximately one-acre Facility through at least two (2) discharge points into an unnamed tributary of Morrison Creek, thence to Morrison Creek itself, from which the water ultimately flows into the Sacramento River and the Sacramento-San Joaquin River Delta ("the Delta"). The Delta and its tributaries are waters of the United States within the meaning of the Clean Water Act.

The Central Valley Regional Water Quality Control Board (the "Regional Board" or "Board") has established water quality standards for the Sacramento River and the Delta in the "Water Quality Control Plan for the Sacramento River and San Joaquin River Basins," generally referred to as the Basin Plan. The Basin Plan includes a narrative toxicity standard which states that "[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life." For the Delta, the Basin Plan establishes standards for several metals, including (at a hardness of 40 mg/L): arsenic – 0.01 mg/L; copper – 0.01 mg/L; iron – 0.3 mg/L; and zinc – 0.1 mg/L. *Id.* at III-3.00, Table III-1. The Basin Plan states that "[a]t a minimum, water designated for use as domestic or municipal supply

(MUN) shall not contain lead in excess of 0.015 mg/L.” *Id.* at III-3.00. The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-5.00.

The Basin Plan also provides that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs).” *Id.* at III-3.0. The EPA has issued a recommended water quality criterion for aluminum for freshwater aquatic life protection of 0.087 mg/L. EPA has established a secondary MCL, consumer acceptance limit for aluminum of 0.05 mg/L to 0.2 mg/L. EPA has established a secondary MCL, consumer acceptance limit for zinc of 5.0 mg/L. EPA has established a primary MCL, consumer acceptance limit for the following: chromium – 0.1 mg/L; copper – 1.3 mg/L; and lead – 0.0 (zero) mg/L. See <http://www.epa.gov/safewater/mcl.html>. The California Department of Health Services has also established the following MCL, consumer acceptance levels: aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); chromium – 0.5 mg/L (primary); copper – 1.0 mg/L (secondary); iron – 0.3 mg/L; and zinc – 5.0 mg/L. See California Code of Regulations, title 22, §§ 64431, 64449.

EPA has also issued numeric receiving water limits for certain toxic pollutants in California surface waters, commonly known as the California Toxics Rule (“CTR”). 40 CFR § 131.38. The CTR establishes the following numeric limits for freshwater surface waters: arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

The Regional Board has also identified waters of the Delta as failing to meet water quality standards for unknown toxicity, electrical conductivity, numerous pesticides and mercury. See <http://www.swrcb.ca.gov/tmdl/docs/2002reg5303dlist.pdf>. Discharges of listed pollutants into an impaired surface water may be deemed a “contribution” to the exceedance of CTR, a water quality standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. See *Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); see also *Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL 2001037 at *3, 5 (E.D. Cal., Aug. 19, 2005) (finding that a discharger covered by the General Industrial Storm Water Permit was “subject to effluent limitation as to certain pollutants, including zinc, lead, copper, aluminum and lead” under the CTR).

The General Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has

implemented the requisite best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT"). The following benchmarks have been established for pollutants discharged by Bavarian Auto: copper - 0.0636 mg/L; oil and grease - 15 mg/L; and, total suspended solids - 100.0 mg/L. The State Water Quality Control Board has also proposed adding a benchmark level for specific conductance of 200 μ mhos/cm. Additional EPA benchmark levels have been established for other parameters that CSPA believes are being discharged from the Facility, including but not limited to, iron - 1.0 mg/L; aluminum - 0.75 mg/L; lead - 0.0816 mg/L; arsenic - 0.16854 mg/L; cadmium - 0.0159 mg/L; cyanide - 0.0636 mg/L; mercury - 0.0024 mg/L; and, silver - 0.0318 mg/L.

II. Bavarian Auto Is Violating the Act by Discharging Pollutants From the Facility to Waters of the United States.

Under the Act, it is unlawful to discharge pollutants from a "point source" to navigable waters without obtaining and complying with a permit governing the quantity and quality of discharges. *Trustees for Alaska v. EPA*, 749 F.2d 549, 553 (9th Cir. 1984). Section 301(a) of the Clean Water Act prohibits "the discharge of any pollutants by any person . . ." except as in compliance with, among other sections of the Act, Section 402, the NPDES permitting requirements. 33 U.S.C. § 1311(a). The duty to apply for a permit extends to "[a]ny person who discharges or proposes to discharge pollutants. . . ." 40 C.F.R. § 122.30(a).

The term "discharge of pollutants" means "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12). Pollutants are defined to include, among other examples, a variety of metals, chemical wastes, biological materials, heat, rock, and sand discharged into water. 33 U.S.C. § 1362(6). A point source is defined as "any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged." 33 U.S.C. § 1362(14). An industrial facility that discharges pollutants into a navigable water is subject to regulation as a "point source" under the Clean Water Act. *Comm. to Save Mokelumne River v. East Bay Mun. Util. Dist.*, 13 F.3d 305, 308 (9th Cir. 1993). "Navigable waters" means "the waters of the United States." 33 U.S.C. § 1362(7). Navigable waters under the Act include man-made waterbodies and any tributaries or waters adjacent to other waters of the United States. *See Headwaters, Inc. v Talent Irrigation Dist.*, 243 F.3d 526, 533 (9th Cir. 2001).

The Sacramento River and the Delta and its tributaries are waters of the United States. Accordingly, Bavarian Auto's discharges of storm water containing pollutants from the Facility are discharges to waters of the United States.

CSPA is informed and believes, and thereupon alleges, that Bavarian Auto has discharged and is discharging pollutants from the Facility to waters of the United States every day that there has been or will be any measurable flow of water from the Facility for the last five years. Each discharge on each separate day is a separate violation of

Section 301(a) of the Act, 33 U.S.C. § 1311(a). These unlawful discharges are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Bavarian Auto is subject to penalties for violations of the Act since October 20, 2006.

III. Pollutant Discharges in Violation of the NPDES Permit.

Bavarian Auto has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit such as the General Permit. 33 U.S.C. § 1342. The General Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand ("BOD"), and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

Further, Discharge Prohibition A(1) of the General Permit provides: "Except as allowed in Special Conditions (D.1.) of this General Permit, materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit." Special Conditions D(1) of the General Permit sets forth the conditions that must be met for any discharge of non-storm water to constitute an authorized non-storm water discharge.

Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

Based on its review of available public documents, CSPA is informed and believes: (1) that Bavarian Auto continues to discharge pollutants in excess of benchmarks; and, (2) that Bavarian Auto has failed to implement BMPs adequate to bring its discharge of these and other pollutants in compliance with the General Permit. Bavarian Auto's ongoing violations are discussed further below.

A. Bavarian Auto Has Discharged Storm Water Containing Pollutants in Violation of the Permit.

Bavarian Auto has discharged and continues to discharge storm water with unacceptable levels of Copper (Cu), Oil and Grease (OG), Total Suspended Solids (TSS) and Specific Conductance (SC) in violation of the General Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. Bavarian Auto's Annual Reports and Sampling and Analysis Results confirm discharges of materials other than storm water and specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit:

1. Discharge of Storm Water Containing Copper (Cu) at Concentration in Excess of Applicable EPA Benchmark Value.

Date	Sampling Location	Parameter	Concentration in Discharge	Proposed Benchmark Value
03/20/2007	Parking Lot Drain	Cu	0.15 mg/L	0.0636 mg/L

2. Discharge of Storm Water Containing Oil and Grease (O&G) at Concentration in Excess of Applicable EPA Benchmark Value.

Date	Sampling Location	Parameter	Concentration in Discharge	Proposed Benchmark Value
03/20/2007	Parking Lot Drain	O&G	45 mg/L	15 mg/L

3. Discharge of Storm Water Containing Total Suspended Solids (TSS) at Concentration in Excess of Applicable EPA Benchmark Value.

Date	Sampling Location	Parameter	Concentration in Discharge	Proposed Benchmark Value
03/20/2007	Parking Lot Drain	TSS	327 mg/L	100 mg/L

4. Discharge of Storm Water Containing Specific Conductance (SC) at Concentration in Excess of Proposed EPA Benchmark Value.

Date	Sampling Location	Parameter	Concentration in Discharge	Proposed Benchmark Value
03/20/2007	Parking Lot Drain	SC	201 µmhos/cm	200 µmhos/cm

CSPA's investigation, including its review of Bavarian Auto's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's benchmark values and the State Board's proposed benchmark for specific conductivity, indicates that Bavarian Auto has not implemented BAT and BCT at the Facility for its discharges of Copper (Cu), Oil and Grease (O&G), Total Suspended Solids (TSS) and Specific Conductance (SC) and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. Bavarian Auto was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, Bavarian Auto is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that Bavarian Auto has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least October 20, 2006. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since October 20, 2006, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that Bavarian Auto has discharged storm water containing impermissible levels of Copper (Cu), Oil and Grease (O&G), Total Suspended Solids (TSS) and Specific Conductance (SC) and other unmonitored pollutants (e.g., Chemical Oxygen Demand) in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Bavarian Auto is subject to penalties for violations of the General Permit and the Act since October 20, 2006.

B. Bavarian Auto Has Failed to Implement an Adequate Monitoring & Reporting Plan.

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Plan by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Permit requires that dischargers "shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled." Section B(5)(c)(i) further requires that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total organic carbon. Oil and grease may be substituted for total organic carbon. Section B(5)(c)(ii) of the General Permit further requires dischargers to analyze samples for all "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." Section B(10) of the General Permit provides that "facility operators shall explain how the facility's monitoring program will satisfy the monitoring program objectives of [General Permit] Section B.2."

Based on its investigation, CSPA is informed and believes that Bavarian Auto has failed to develop and implement an adequate Monitoring & Reporting Plan. First, based on its review of publicly available documents, CSPA is informed and believes that Bavarian Auto has failed to collect storm water samples during at least two qualifying storms event (as defined by the General Permit) during the past five years. Second, based on its review of publicly available documents, CSPA is informed and believes that Bavarian Auto has failed to conduct the monthly visual monitoring of storm water discharges and the quarterly visual observations of unauthorized non-storm water discharges required under the General Permit during the past five years. Third, based on its review of publicly available documents, CSPA is informed and believes that Bavarian Auto has failed to analyze samples for the required additional analytical parameters as set forth in Table D of the General Permit or toxic chemicals and other pollutants that are likely to be present in significant quantities in the storm water discharged from the Facility. Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Bavarian Auto is subject to penalties for violations of the General Industrial Storm

Water Permit and the Act since October 20, 2006. These violations are set forth in greater detail below:

1. Bavarian Auto Has Failed to Collect Storm Water Samples During at Least Two Rain Events In the Last Five Years.

Section B of the General Industrial Storm Water Permit allows facility operators to participate in group monitoring, which must create and comply with a Group Monitoring Plan (GMP). Section B(15). Section B(15)(b) requires that "(e)ach GMP participant shall collect and analyze samples from at least two storm events in accordance with Section B.5 over the five-year period of this General Permit." Although Section B(5) provides that "(f)acility operators shall collect storm water samples during the first hour of discharge," Section B(8)(b) also provides that "(a) facility operator may conduct visual observations and sample collection more than one hour after discharge begins if the facility operator determines that the objectives of this Section will be better satisfied."

Based on its review of publicly available documents, CSPA is informed and believes that Bavarian Auto has failed to collect storm water samples from all discharge points during at least two qualifying rain events at the Facility during the past five years, as required by the General Permit. For example, CSPA notes that the Annual Report filed by Bavarian Auto for the Facility for the 2009-2010 Wet Season reported that, despite its GMP requirement to sample a storm, Bavarian Auto failed to sample a single storm water discharge during any qualifying storm event that wet season. In the prior year, the 2008-2009 Wet Season, Bavarian Auto also reported that it failed to sample a single storm as required by its GMP. In the last five years, Bavarian Auto has only managed to sample one storm event, reported in its 2006-2007 Annual Report.

Bavarian Auto reported in two of the last five years (i.e., 2008-2009 Wet Season and 2009-2010 Wet Season), that the Facility was unable to sample because, for every single storm water discharge that occurred at the Facility for each of these two wet seasons, the first hour of discharge occurred before or after office hours. However, Section B(8)(b) provides that a Facility may sample past the first hour of a storm discharge if "the objectives of this Section will be better satisfied." It is inarguable that the objectives of the Section are "better satisfied" if a facility samples after the first hour of a discharge, rather than not sampling at all over the course of an entire wet season, for at least three consecutive years.

Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than the two sampling/discharge points currently designated by Bavarian Auto. Bavarian Auto reported in its 2009-2010 Annual Report that it has at least three discharge points, as demonstrated in the map that Bavarian Auto included in the Report. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

2. Bavarian Auto Has Failed to Conduct the Monthly Wet Season Observations of Storm Water Discharges Required by the General Permit.

The General Permit requires dischargers to “visually observe storm water discharges from one storm event per month during the wet season (October 1 – May 30).” General Permit, Section B(4)(a). Section B(15)(h) requires that “(a)ll participants in an approved GMP that have not been selected to sample in a particular wet season are required to comply with all other monitoring program and reporting requirements of this Section.” Even if a facility is not required to sample a storm event discharge during the wet season, it is still required to make monthly visual observations. The annual reports filed by Bavarian Auto at the Regional Board required Bavarian Auto to document these required visual observations on Form 4 Monthly Visual Inspections. As evidenced by the lack of Form 4 Monthly Visual Observations contained in the annual reports Bavarian Auto has filed for the Facility over the last four (4) Wet Seasons (i.e., 2006-2007 Wet Season; 2007-2008 Wet Season; 2008-2009 Wet Season; and, 2009-2010 Wet Season), CSPA is informed and believes that Bavarian Auto has failed to properly conduct the monthly Wet Season visual monitoring of storm water discharges required under the General Permit.

Specifically, Bavarian Auto failed to conduct monthly visual observations of discharges from qualifying storm events for any month during any wet season, instead asserting that a qualifying storm never occurred at the Facility during the entire wet season of each of the past five years (discussed further below). However, based on publicly available rainfall data, CSPA is informed and believes that there were many qualifying storm events during each of these wet seasons that Bavarian Auto could have observed. To wit, Bavarian Auto reported in its 2008-2009 Annual Report that it did not rain at all during the month of April, 2009, when in fact, it rained 0.89” at the Facility on Tuesday, April 07, 2009. Another example of Bavarian Auto’s failure to conduct required monthly visual observations arises in its 2006-2007 Annual Report. Namely, Bavarian Auto reported in its 2006-2007 Annual Report that it rained on the Facility on Thursday November 2, 2006, but not enough to produce a discharge. However, it rained 0.40” on that day, which was almost double the amount of rain that fell on the Facility on the day Bavarian Auto sampled later that same wet season, when it rained 0.22” on March 20, 2007. Bavarian Auto’s failure to conduct this required monthly Wet Season visual monitoring extends back to at least October 20, 2006. Bavarian Auto’s failure to conduct this required monthly Wet Season visual monitoring has caused and continues to cause multiple, separate and ongoing violations of the General Permit and the Act.

3. Bavarian Auto Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since October 20, 2006.

CSPA is informed and believes that publicly available documents demonstrate Bavarian Auto’s consistent and ongoing failure to implement an adequate Monitoring

Reporting Plan in violation of Section B of the General Permit. Bavarian Auto's failure to sample at least two qualifying storm events in the last five years or report monthly visual observations of storm water discharge are not the Facility's only violations of the General Permit's monitoring and reporting requirements. As mentioned above, based on its review of publicly available documents, CSPA is informed and believes that Bavarian Auto has failed to analyze samples of storm water discharged from the Facility for all pollutant parameters required under Table D of the General Permit. Recall that the Facility falls under SIC Code 5015 ("Automobile Salvage Yards"). Under Table D of the General Permit, facilities falling within SIC Code 5015 are required to analyze collected samples of storm water discharged from their facility for total suspended solids (TSS), iron (Fe), lead (Pb) and aluminum (Al). Based on its review of publicly available documents, CSPA is informed and believes that for the past five Wet Seasons, Bavarian Auto has failed to analyze samples of storm water discharged from the Facility for iron and aluminum as required under Table D of the General Permit.

This outright failure to meet General Permit requirements and adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act. Accordingly, consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Bavarian Auto is subject to penalties for these violations of the General Permit and the Act since October 20, 2006.

C. Bavarian Auto Has Failed to Implement BAT and BCT.

Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). CSPA's investigation indicates that Bavarian Auto has not implemented BAT and BCT at the Facility for its discharges of Copper (Cu), Oil and Grease (O&G), Aluminum (Al), Iron (Fe), Total Suspended Solids (TSS), Specific Conductance (SC) and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

To meet the BAT/BCT requirement of the General Permit, Bavarian Auto must evaluate all pollutant sources at the Facility and implement the best structural and non-structural management practices economically achievable to reduce or prevent the discharge of pollutants from the Facility. Based on the limited information available regarding the internal structure of the Facility, CSPA believes that at a minimum Bavarian Auto must improve its housekeeping practices, store materials that act as pollutant sources under cover or in contained areas, treat storm water to reduce pollutants before discharge (e.g., with filters or treatment boxes), and/or prevent storm water discharge altogether. Bavarian Auto has failed to adequately implement such measures.

Bavarian Auto was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, Bavarian Auto has been in continuous violation of the BAT

and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that it fails to implement BAT and BCT. Bavarian Auto is subject to penalties for violations of the General Permit and the Act occurring since October 20, 2006.

D. Bavarian Auto Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.

Section A(1) and Provision E(2) of the General Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to Water Quality Order No. 97-03-DWQ to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 9, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)). Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the

discharge of any pollutants causing or contributing to the exceedance of water quality standards.

CSPA's investigation and review of available documents regarding conditions at the Facility indicate that Bavarian Auto has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Bavarian Auto has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Accordingly, Bavarian Auto has been in continuous violation of Section A(1) and Provision E(2) of the General Permit every day since October 1, 1992, and will continue to be in violation every day that it fails to develop and implement an effective SWPPP. Bavarian Auto is subject to penalties for violations of the Order and the Act occurring since October 20, 2006.

E. Bavarian Auto Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.

Receiving Water Limitation C(3) requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to its current BMPs in order to prevent or reduce the discharge of any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. Once approved by the Regional Board, the additional BMPs must be incorporated into the Facility's SWPPP. The report must be submitted to the Regional Board no later than 60-days from the date the discharger first learns that its discharge is causing or contributing to an exceedance of an applicable water quality standard. Receiving Water Limitation C(4)(a). Section C(11)(d) of the Permit's Standard Provisions also requires dischargers to report any noncompliance. *See also* Provision E(6). Lastly, Section A(9) of the Permit requires an annual evaluation of storm water controls including the preparation of an evaluation report and implementation of any additional measures in the SWPPP to respond to the monitoring results and other inspection activities.

As indicated above, Bavarian Auto is discharging elevated levels of Copper (Cu), Oil and Grease (O&G), Total Suspended Solids (TSS), Specific Conductance (SC) and other unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, Bavarian Auto was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on CSPA's review of available documents, Bavarian Auto was aware of high levels of these pollutants prior to October 20, 2006. Likewise, Bavarian Auto has generally failed to file reports describing its noncompliance with the General Permit in violation of Section C(11)(d). Lastly, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). Bavarian Auto has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Permit every day since October 20, 2006,

and will continue to be in violation every day it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. Bavarian Auto is subject to penalties for violations of the General Permit and the Act occurring since October 20, 2006.

F. Bavarian Auto Has Failed to File Timely, True and Correct Reports.

Section B(14) of the General Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

CSPA's investigation indicates that Bavarian Auto has submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. For example, Bavarian Auto reported in both the 2008-2009 and 2009-2010 Annual Report that it could not sample a single storm water discharge during each respective wet season because the conditions required by the General Permit to sample were never met. However, as discussed above, based on CSPA's review of publically available rainfall data, CSPA believes it cannot possibly be true that conditions were never met to sample storm water discharge at the Facility.

Further, Bavarian Auto reported in every single Annual Report filed for the Facility for each of the last five years, that conditions were never right for any month, out of each eight-month wet season, to report the monthly storm water discharge visual observation, as required by Section B(4). However, as discussed above, based on CSPA's review of publicly available rainfall data, CSPA believes it cannot possibly be true that conditions were never met to report monthly storm water discharge visual observations for any month in the last five wet seasons. This is particularly apparent for March 2007, as Bavarian Auto asserted in its 2006-2007 Annual Report that it could not perform a monthly visual observation for March 2007, but somehow was able to take a sample for analysis from a discharge on March 20th. In light of the fact that Bavarian Auto reported in its 2006-2007 Annual Report that it did in fact have one discharge on March 20, 2007, when it rained 0.22" on the Facility, there were at least nineteen storm events in each of the past five wet seasons that likely produced a discharge at the Facility because each of those days it rained at least 0.22".

Although Bavarian Auto reported there were some storm events that produced a discharge at the Facility, Bavarian Auto reported that these discharges took place before or after office hours. It strains credulity that Bavarian Auto never experienced a storm event discharge at the Facility during office hours. Bavarian Auto bases its assertion on employee observation at the Facility, made all seven days of the week, from as early as 7am and as late as 10pm on any given day of the week. It is difficult to ascertain how

Bavarian Auto knew that discharge occurred "after business hours" if an employee was there to report such discharge. Further, based on Bavarian Auto's Annual Reports, the Facility has extensive office hours. For example, in the 2006-2007 Annual Report, Bavarian Auto reported that it rained on the Facility on Saturday, December 9, 2006 and Sunday, December 10, 2006, both at 7am. In the 2008-2009 Annual Report, Bavarian Auto reported that on Saturday, November 1, 2008, it rained at 9am and on Sunday, February 15, 2009, a storm event produced discharge at 10pm. Bavarian Auto does not explain why it reported that there was discharge from a storm event on February 15, 2009, but did not collect a sample or make a monthly observation, but instead uses this information to report that it could not make a visual observation or sample.

Bavarian Auto's demonstrated tendency to file false reports is also found in its reporting that it only has two discharge areas, when it included a map in its 2009-2010 Annual Report that demonstrates at least three discharge areas. Bavarian Auto fails to account for the existence of a third discharge point in the northern corner of the Facility.

Finally, perhaps the most egregious example of Bavarian Auto's demonstrated tendency to file false reports comes from Bavarian Auto's assertion in its 2009-2010 Annual Report that it could not sample or observe a single instance of storm water discharge during the 2009-2010 Wet Season because "all runoff events occurred outside of work hours" and "we would need a rain event to occur during business hours that had runoff at both drain locations on our property." There is no requirement in the General Permit that requires a facility to have discharge in every drain location on the facility in order to sample. There is a requirement in the General Permit that the facility operator sample outside of the first hour of discharge if the objectives of the General Permit "will be better satisfied." Section B(8)(b). Bavarian Auto ignored plainly stated General Permit requirements and falsely asserted non-existent requirements as a basis for its non-compliance.

These are only a few examples of how Bavarian Auto has failed to file completely true and accurate reports. As indicated above, Bavarian Auto has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, Bavarian Auto has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time Bavarian Auto submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. Bavarian Auto's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. Bavarian Auto is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since October 20, 2006.

IV. Persons Responsible for the Violations.

CSPA puts Bavarian Auto Recycling, Inc., Bryce Eagle, Brett Friend and Nelson Parker on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Bavarian Auto Recycling, Inc., Bryce Eagle, Brett

Friend and Nelson Parker on notice that it intends to include those persons in this action.

V. Name and Address of Noticing Party.

Our name, address and telephone number is as follows: California Sportfishing Protection Alliance, Bill Jennings, Executive Director; 3536 Rainier Avenue, Stockton, CA 95204; Phone: (209) 464-5067.

VI. Counsel.

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Andrew L. Packard
Erik M. Roper
Emily J. Brand
Law Offices of Andrew L. Packard
100 Petaluma Boulevard, Suite 301
Petaluma, CA 94952
Tel. (707) 763-7227
Fax. (707) 763-9227
E-mail: Andrew@PackardLawOffices.com
Erik@PackardLawOffices.com
Emily@PackardLawOffices.com

VII. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act Bavarian Auto Recycling, Inc., Bryce Eagle, Brett Friend and Nelson Parker to a penalty of up to \$32,500 per day per violation for all violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations occurring after January 12, 2009, during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Bavarian Auto Recycling, Inc. and its agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do

Notice of Violation and Intent To File Suit
October 20, 2011
Page 17 of 17

not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings". The signature is fluid and cursive, with the first name "Bill" and last name "Jennings" clearly distinguishable.

Bill Jennings, Executive Director
California Sportfishing Protection Alliance

SERVICE LIST

Lisa Jackson, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Jared Blumenfeld
Administrator, U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Eric Holder
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

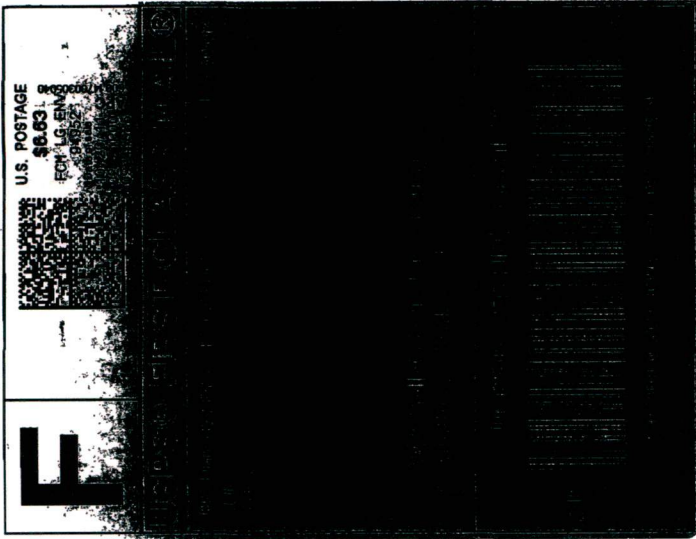
Dorothy R. Rice, Executive Director
State Water Resources Control Board
1001 I Street Sacramento, CA 95814
P.O. Box 100
Sacramento, CA 95812-0100

Pamela Creedon, Executive Officer
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

ATTACHMENT A
Notice of Intent to File Suit, Bavarian Auto Recycling, Inc. (Rancho Cordova, CA)
Significant Rain Events,* October 20, 2006 – October 20, 2011

Nov. 02 2006	Jan. 24 2008	Dec. 12 2009	Jan. 01 2011
Nov. 11 2006	Jan. 25 2008	Dec. 13 2009	Jan. 02 2011
Nov. 13 2006	Jan. 27 2008	Dec. 27 2009	Jan. 13 2011
Nov. 27 2006	Jan. 29 2008	Jan. 12 2010	Jan. 30 2011
Dec. 08 2006	Jan. 31 2008	Jan. 13 2010	Feb. 16 2011
Dec. 09 2006	Feb. 02 2008	Jan. 17 2010	Feb. 17 2011
Dec. 10 2006	Feb. 19 2008	Jan. 18 2010	Feb. 18 2011
Dec. 11 2006	Feb. 20 2008	Jan. 19 2010	Feb. 19 2011
Dec. 12 2006	Oct. 03 2008	Jan. 20 2010	Feb. 24 2011
Dec. 27 2006	Oct. 04 2008	Jan. 31 2010	Feb. 25 2011
Dec. 30 2006	Oct. 30 2008	Feb. 03 2010	Mar. 06 2011
Dec. 26 2006	Oct. 31 2008	Feb. 04 2010	Mar. 13 2011
Feb. 07 2007	Nov. 01 2008	Feb. 06 2010	Mar. 14 2011
Feb. 08 2007	Nov. 03 2008	Feb. 09 2010	Mar. 15 2011
Feb. 09 2007	Dec. 14 2008	Feb. 23 2010	Mar. 16 2011
Feb. 10 2007	Dec. 15 2008	Feb. 26 2010	Mar. 18 2011
Feb. 11 2007	Dec. 30 2008	Feb. 27 2010	Mar. 19 2011
Feb. 12 2007	Dec. 24 2008	Mar. 02 2010	Mar. 20 2011
Feb. 22 2007	Dec. 25 2008	Mar. 03 2010	Mar. 23 2011
Feb. 24 2007	Jan. 21 2009	Mar. 12 2010	Mar. 24 2011
Feb. 25 2007	Jan. 22 2009	Mar. 30 2010	Mar. 26 2011
Mar. 20 2007	Jan. 23 2009	Mar. 31 2010	May 15 2011
Apr. 11 2007	Feb. 11 2009	April 04 2010	May 16 2011
Apr. 14 2007	Feb. 12 2009	April 11 2010	May 17 2011
Apr. 30 2007	Feb. 13 2009	April 12 2010	May 25 2011
Apr. 22 2007	Feb. 15 2009	April 20 2010	
May 02 2007	Feb. 16 2009	April 21 2010	
May 03 2007	Feb. 17 2009	April 27 2010	
May 04 2007	Feb. 22 2009	April 28 2010	
Oct. 10 2007	Feb. 23 2009	May 10 2010	
Oct. 12 2007	Feb. 26 2009	May 25 2010	
Nov. 10 2007	Mar. 01 2009	May 27 2010	
Nov. 11 2007	Mar. 02 2009	Nov. 07 2010	
Dec. 04 2007	Mar. 03 2009	Nov. 19 2010	
Dec. 06 2007	Mar. 04 2009	Nov. 20 2010	
Dec. 07 2007	Mar. 22 2009	Nov. 23 2010	
Dec. 17 2007	April 07 2009	Nov. 27 2010	
Dec. 18 2007	April 09 2009	Dec. 04 2010	
Dec. 19 2007	May 01 2009	Dec. 05 2010	
Dec. 20 2007	Oct. 13 2009	Dec. 06 2010	
Jan. 03 2008	Oct. 14 2009	Dec. 14 2010	
Jan. 04 2008	Oct. 19 2009	Dec. 17 2010	
Jan. 08 2008	Nov. 12 2009	Dec. 18 2010	
Jan. 10 2008	Nov. 17 2009	Dec. 19 2010	
Jan. 11 2008	Nov. 20 2009	Dec. 22 2010	
Jan. 21 2008	Nov. 27 2009	Dec. 25 2010	
Jan. 22 2008	Dec. 07 2009	Dec. 28 2010	
Jan. 23 2008	Dec. 11 2009	Dec. 29 2010	

* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.



INSPECTED 2



X-RAY
OCT 24 2011
DOJ MAILROOM

Law Offices of Andrew L. Packard
100 Petaluma Blvd. N., Suite 301
Petaluma, CA 94952

VIA CERTIFIED MAIL
Eric Holder, Attorney General
U.S. Department of Justice
950 Pennsylvania Ave. N.W.
Washington, D.C. 20540

RETURN RECEIPT
REQUESTED

